

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00030
Petitioners: Norma & Laurence Venditti
Respondent: Department of Local Government Finance
Parcel #: 010100100690003
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in the fall of 2003. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property should not be changed and notified the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on March 25, 2004.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 20, 2004, in Crown Point, Indiana, before Special Master Jennifer Bippus.

Facts

5. The subject property is located at: 17710 White Oak, Lowell, Indiana.
6. The subject property is an improved residential property.
7. The Special Master did not conduct an on-site visit of the property.

8. Assessed Value of subject property as determined by the DLGF:
Land: \$29,500 Improvements: \$150,200 Total: \$179,700.

Assessed Value requested by Petitioners:

Total: \$136,950.

9. The following persons were present at the hearing.

For Petitioners: Laurence Venditti, property owner
 Norma Venditti, property owner

For Respondent: David M. Depp, Sr. Appraiser, Cole-Layer-Trumble (CLT)

10. Persons sworn in at hearing:

For Petitioners: Laurence Venditti, property owner
 Norma Venditti, property owner

For Respondent: David M. Depp, Sr. Appraiser, CLT

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
- a) The Petitioners presented an estimate of value from a Century 21 realtor placing the property at a sale value between \$145,000 and \$159,900. The realtor told the Venditti's that they would have to have certain problems fixed in order to sell the house in the above listed price range. (*Venditti testimony; Petitioners' Exhibit 8*).
 - b) The Petitioners presented exhibits showing the costs of repair to the basement (\$22, 959) and to the garage door (\$182). The Petitioners opined that these repairs should be subtracted from their estimate of value. By using the high estimated listing price submitted by the realtor and subtracting the repairs, the property should be valued at \$136,950. (*Venditti testimony; Petitioners' Exhibits 3, 6, & 7*).
 - c) The Petitioners presented photographs showing a major leak in the basement when it rains and also stated for the record that the garage door would need to be repaired as it fits improperly. (*Venditti testimony; Petitioners' Exhibits 4 & 5*).
 - d) The Petitioners contended that for all practical purposes the value of the home is greatly depreciated because of the two problems that exist: the garage door and the leak in the basement. The value of the home should be reduced to take these items into consideration. (*Venditti testimony*).

12. Summary of Respondent's contentions in support of assessment:
- a) The Respondent presented photographs of the subject residence and also of two comparable properties and contended the assessment is in line with other similar residences. (*Respondent's Exhibits 3, 4, 5, 6, & 7; Depp Testimony*).
 - b) The Respondent opined that, in houses thirty years old, it is not uncommon for structural flaws such as basement cracks or other foundation problems to exist. The extent of damage is hard to judge from photographs. (*Depp Testimony*).
 - c) At the informal hearing, there were no exhibits provided for review as far as costs to repair damages. (*Depp Testimony*).
 - d) The listings from the sales exhibit in the West Creek area that the Petitioners presented vary widely in different aspects and do not necessarily mirror the subject property. (*Depp Testimony*).
 - e) The sales information from CLT shows two sales in the immediate area. Comparable One is a one-story ranch, has nine additional acres of land, is comparable in size, and has a ½ basement versus the subject's full basement. The comparable property sold for \$249,000. (*Respondent's Exhibit 4 & 5*).
 - f) Comparable Two has more land, is smaller in size, and has a full basement and outbuildings. The comparable property sold for \$200,000. (*Respondent's Exhibit 6 & 7*).
 - g) The comparables are one-story ranches. The out buildings and additional acreage account for higher sale prices. The subject property is still assessed fairly in comparison. (*Depp Testimony*).
 - h) The Respondent contends that the subject property was valued from the 2002 Version A - Real Property Assessment Guideline and no adjustments are allowed for obsolescence on residential properties to account for the leaky basement or misaligned garage door. Deterioration of a home that is thirty years old is a normal maintenance problem for the owner. (*Depp Testimony*).

Record

13. The official record for this matter is made up of the following:
- a) The Petition, and all subsequent pre-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #311.
 - c) Exhibits:
 - Petitioners' Exhibit 1: Copy of Form 139L.
 - Petitioners' Exhibit 2: Summary of Petitioners' Arguments.
 - Petitioners' Exhibit 3: Written outline of evidence explaining its relevance.
 - Petitioners' Exhibit 4: Photograph of basement crack, eastside wall.
 - Petitioners' Exhibit 5: Photograph of southwest wall by water softener showing flooding in basement.
 - Petitioners' Exhibit 6: Estimate to repair basement to prevent flooding.
 - Petitioners' Exhibit 7: Estimate to repair garage door.
 - Petitioners' Exhibit 8: CMA Report of Mike Earnshaw/Century 21 McCarthy.

- Respondent's Exhibit 1: Copy of Form 139L.
Respondent's Exhibit 2: Copy of property record card (PRC) of subject property.
Respondent's Exhibit 3: Subject property photograph.
Respondent's Exhibit 4: Top three comparable property results and top twenty comparable property results.
Respondent's Exhibit 5: PRC for parcel 010-10-01-0051-0020.
Respondent's Exhibit 6: Photograph of parcel 010-10-01-0051-0020.
Respondent's Exhibit 7: PRC for parcel 010-10-01-0085-0002.
Respondent's Exhibit 8: Photograph of parcel 010-10-01-0085-0020.

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of the DLGF has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect and specifically what the correct assessment would be. *See Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
 - b) The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertion in order for it to be considered material to the facts. *See generally Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
15. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a) The Petitioners did not support their opinion with market data for the subject property and were not able to substantiate their opinion that the value of the property is too high.
 - b) The Petitioners presented a CMA Report (*Petitioners' Exhibit 8*) showing an estimated value for the home between \$145,000 and \$159,900. The CMA Report was not signed and the estimate was only a suggested listing price range from a realtor, not an appraised value from a certified professional appraiser.
 - c) The CMA Report identified eight properties, with sales prices ranging from \$140,000 to \$230,000. In addition to a \$90,000 range in sales price, the eight properties were constructed between 1969 and 1986 and show variations in the number of bedrooms (3 to 5), square footage (1,300 to 1,936), and garages (two cars to four cars).
 - d) The realtor who prepared the report did not appear at the hearing and no explanation of these variations was presented to establish the properties are truly comparable, either to each other or to the property under appeal. Further, the realtor was not present to explain the factors considered in the valuation, such as which of the three estimates of repair (ranging from \$10,816 to \$26,228) would be necessary to make the home marketable. Although the Petitioners selected the \$22,959 repair option to subtract in their calculation of value, nothing in the record explains the reason this value was selected rather than one of the other options proposed by the contractor.

- e) The petitioners presented no evidence to establish that the alleged defects in the home were not taken into account by the current condition rating of average.
- f) For example, the Petitioners presented no evidence of any comparable properties to demonstrate their property has been assessed differently than similarly situated properties. The Petitioners also failed to introduce evidence of any error in the application of the 2002 Version A – Real Property Assessment Guideline by the DLGF.
- g) The Petitioners therefore did not establish a prima facie case of error.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.